FILE COPY

Supreme Court, U. S.
FILED
MAR 14 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

72-1143

October Term, 1972

No. A-673

ROBERT SPERCEL, D.B.A. SPERCEL TOOL CO.,
Petitioner,

vs.

STERLING INDUSTRIES, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT IN OPPOSITION

SHELDON BERNS
KAHN, KLEINMAN, YANOWITZ & ARNSON
1040 Leader Building
Cleveland, Ohio 44114
Counsel for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

In the Supreme Court of the United States

October Term, 1972

No. A-673

ROBERT SPERCEL, D.B.A. SPERCEL TOOL CO.,
Petitioner,

vs.

STERLING INDUSTRIES, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT IN OPPOSITION

The claim of a denial of due process of law has become a familiar vehicle for seeking admission before this Court. Its proper application has often transformed what appears to be a question solely for determination by a state tribunal into a matter for federal determination by the highest court of the land. However, one needs no authority to state that it is essential that this Court carefully scrutinize and deny admission to purely state matters that have been disguised in the federal garb of a due process claim, lest the floodgates of the Supreme Court be opened to all who seek admission.

In asserting a due process claim in the case at bar, petitioner has attempted to disguise, and not too neatly at that, what is simply and plainly a question of fact embracing issues under state law. When, on October 2, 1965, respondent filed its Motion for a Nunc Pro Tunc Entry to journalize the alleged settlement agreement of October 31, 1963, and the Trial Court thereafter granted the Motion only one question was brought into focus for purposes of appeal—whether the parties had agreed to a final and binding settlement of the claims embraced in petitioner's Complaint. Contrary to the position of petitioner in his first and third questions presented, the finding by the Ohio Supreme Court adverse to petitioner on what is clearly a question of fact, did not establish any federal question.

During the course of appeal, both petitioner and respondent relied upon a vast array of state and federal cases which were pertinent (some more than others) to the effect which should be given to a settlement entered into prior to trial between the litigants in the presence of the trial judge. Contrary to the position of petitioner in his second question presented, the interpretation and application of those cases by the Ohio Supreme Court adverse to the position of petitioner did not establish a federal question under the due process clause.

In essence, petitioner has attacked the very right of the Ohio Supreme Court to exercise its legitimate appellate function. Though wrapped in the garb of a constitutional due process claim, petitioner's attack is not based upon any federal question and is not worthy of this Court's consideration.

Petitioner's brief reveals merely a disagreement by petitioner with the findings of the Ohio Supreme Court which were made only after a careful and searching study of the record and the law. A federal question in this case being clearly absent, it is submitted that a Writ of Certiorari should not be granted based solely upon petitioner's disagreement with the findings of the Ohio Supreme Court.

Accordingly, respondent submits that the petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

SHELDON BERNS
Counsel for Respondents